

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM DEMETRIUS BAILEY,

Defendant-Appellant.

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UNPUBLISHED

June 12, 2007

No. 270061

Wayne Circuit Court

LC No. 06-001016-01

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of armed robbery, MCL 750.529, first-degree home invasion, MCL 750.110a(2), and felonious assault, MCL 750.82. He was sentenced to concurrent prison terms of 14 to 30 years for the armed robbery conviction, 10 to 20 years for the first-degree home invasion conviction, and one to four years for the felonious assault conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court's findings were clearly erroneous and that he is entitled to a new trial because the evidence was insufficient to support his convictions. We disagree. In reviewing a verdict reached in a bench trial, we review the trial court's factual findings for clear error and its conclusions of law de novo. MCR 2.613(C); *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995). In addition, when determining whether sufficient evidence exists to support a conviction, we must view the evidence in the light most favorable to the prosecution and determine whether a rational factfinder could conclude that the prosecutor proved every element of the crime charged beyond a reasonable doubt. *People v Sherman-Huffman*, 466 Mich 39, 40-41; 642 NW2d 339 (2002); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). A reviewing court must draw all reasonable inferences and make credibility determinations in support of the jury verdict. *Nowack, supra* at 400.

Defendant argues that Tarance Days' testimony was incredible as a matter of law, resulting in his conviction based on insufficient evidence. Regarding his armed robbery conviction, defendant contends that the evidence did not support a finding that he was armed with a knife because he would not have been able to perform the physical acts described by Tarance while holding a knife to Tarance's throat. Tarance testified that defendant pulled a knife out of his pocket and forced Tarance inside the house. Defendant then held the knife to Tarance's throat and forced him upstairs where he kicked in George Days's door while still

holding the knife to Tarance's throat. These acts were not so physically demanding that a reasonable trier of fact would necessarily have concluded that defendant could not have performed them. The trial court's finding that defendant was armed with a knife is not clearly erroneous.

Defendant contends that no corroborating evidence supported Tarance's testimony. Although he asserts that the police officers did not testify regarding any evidence of a crime inside the house, the officers were not asked whether they observed such evidence. In addition, although Officer Justin Woodbeck did not recover any weapons or pillowcases full of items when he arrested defendant, this does not mean that defendant did not commit the offenses. Officer Woodbeck testified that he did not search the entire house when he arrested defendant, but rather, only the immediate area. In any event, the prosecutor was not required to present evidence corroborating Tarance's testimony. "A complainant's eyewitness testimony, if believed by the trier of fact, is sufficient evidence to convict." *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976). Thus, corroborating evidence was not required.

Further, contrary to defendant's argument, the prosecutor presented evidence corroborating Tarance's testimony. Defendant's mother confirmed that Tarance told her when she called his residence that "Skills" had just robbed him. Tarance testified that defendant's nickname was "Skills" and that everyone in the neighborhood referred to him by this nickname. Therefore, defendant's mother corroborated Tarance's testimony.

Defendant also contends that Tarance's testimony was not credible because of four instances in which his trial testimony allegedly contradicted his preliminary examination testimony. These four instances pertain to whether defendant and George left the house together before defendant returned, the time that defendant left the house, the time that defendant returned to the house, and whether a person known as "Ronnie" was at the house. Any inconsistencies regarding these matters were not material to whether defendant committed the offenses because these alleged inconsistencies do not involve essential elements of the offenses or even pertain to defendant's actions during his commission of the offenses. In any event, determining a witness's credibility in light of inconsistent testimony goes to the weight and not to the sufficiency of the evidence. *People v Naugle*, 152 Mich App 227, 235-236; 393 NW2d 592 (1986). "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Accordingly, the trial court's findings were not clearly erroneous, and defendant's convictions were not based on insufficient evidence.

Defendant next argues that he was denied the effective assistance of counsel because defense counsel failed to contact and produce a key witness at trial and failed to obtain pertinent telephone records. We disagree. Because defendant failed to raise this issue in a motion for a new trial or evidentiary hearing in the trial court, this Court's review is limited to errors apparent on the record. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004), quoting *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced the defendant that it deprived him of a fair trial. *People v Pickens*, 446 Mich 298,

302-303; 521 NW2d 797 (1994); *People v Moorer*, 262 Mich App 64, 75-76; 683 NW2d 736 (2004). With respect to the prejudice requirement, a defendant must demonstrate a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *Moorer, supra*. A defendant must also overcome the strong presumption that counsel's actions constituted sound trial strategy. *Toma, supra* at 302.

Defendant argues that defense counsel was ineffective for failing to contact Ronald Peterson and present Peterson's testimony at trial. Defense counsel's decisions regarding what evidence to present and whether to call certain witnesses at trial are presumed to constitute trial strategy, and this Court will not review such decisions with the benefit of hindsight. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Defendant asserts that Peterson averred in an affidavit that defendant did not harm anyone on the day of the incident. The affidavit was not included in the lower court record, however, and it cannot be considered by this Court because it is impermissible to expand the record on appeal. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Accordingly, defendant has failed to overcome the presumption that counsel's decision not to call Peterson as a witness constituted sound trial strategy. *Dixon, supra*.

Defendant also argues that counsel was ineffective for failing to obtain Tarance's telephone records. Defendant contends that the records show that he made several telephone calls using Tarance's phone during the time that he allegedly committed the offenses. Defendant has failed to establish that counsel's decision did not constitute sound trial strategy and that but for counsel's alleged errors, the result of the proceeding would have been different. *Toma, supra* at 302-303; *Moorer, supra* at 75-76. During trial, defendant maintained that he twice used Tarance's telephone to call his mother's cell phone. The prosecutor presented evidence of defendant's mother's cell phone records, however, which indicated that she received only one phone call traced to Tarance's phone. In addition, defendant's mother testified that defendant called her only once that morning. Therefore, Tarance's telephone records would not have supported defendant's argument or aided his defense. Moreover, even if the records showed that defendant used Tarance's telephone to call his mother, the bus station, his aunt, and his brother, as he claimed, such evidence would not have established that he could not have committed the offenses. Thus, defendant has failed to overcome the presumption that counsel's decision not to present evidence of Tarance's telephone records constituted sound trial strategy. *Dixon, supra* at 398.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio